*THE HON'BLE SRI JUSTICE P.S.NARAYANA

+Writ Petition No.27225 of 2006

% 20-11-2007

Airport Authority of India
Hyderabad Airport,
Represented by its Director,
Hyderabad. .. Petitioner

And

$ Sumanasa Finance Pvt. Ltd.
Represented by its Managing Partner
and another .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri E.Madan Mohan Rao

^ Counsel for respondent No.1 : Sri M.V.S. Suresh Kumar

?CASES REFERRED :

1. AIR 1977 Delhi 189
2. (1976) 3 SCC 407
3. AIR 1974 Delhi 26

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Between :

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ORDER:-

1. Heard Sri E.Madan Mohan Rao, the learned Counsel representing the writ petitioner –Airport Authority of India, Hyderabad Airport, represented by its Director, Hyderabad and Sri M.V.S.Suresh Kumar, the learned Counsel representing 1st respondent.

2. The Writ Petition is filed for a Writ of Certiorari to call for the records relating to and connected with the order of the 2nd respondent – appellate authority passed in C.M.A.No.24/2005 dated 29-6-2006 and quash or set aside the same and pass such other suitable orders.

3. Sri Madan Mohan Rao, the learned Counsel representing the writ petitioner had taken this Court through the order impugned in the Writ Petition, the reasons recorded thereunder and also further pointed out

to the relevant portions of the order made in C.M.A.No.100/2002 as well. The learned Counsel had taken this Court through the relevant portions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter, in short, referred to as "the Act" for the purpose of convenience) and would maintain that the order of remand made by the 2nd respondent directing the Estate Officer to pass two separate orders – one as per the remand order made by the learned Principal District Judge, Ranga Reddy in C.M.A.No.100/2002 and another under Section 7(1) and (2) of the Act by giving reasons, cannot be sustained since no prejudice as such had been caused to the 1st respondent. The learned Counsel also would maintain that the arrears are huge arrears and the 1st respondent is just continuing in possession unauthorizedly without any authority whatsoever and in the event of the impugned order being confirmed by this Court, the writ petitioner would be put to serious loss. The learned Counsel also placed strong reliance on the relevant portions of the order made in W.P.No.24076/2004 and ultimately, the learned Counsel would conclude that in the facts and circumstances of the case, the Writ Petition to be allowed.

4. Per contra, Sri M.V.S.Suresh Kumar had taken this

Court through Sections 5 and 7 of the Act and would maintain that the scope and ambit and the nature of the orders to be made and these provisions being different, a combined order or an amalgamate order cannot be made. Even otherwise, when an order of remand is made, the original authority cannot be travelled beyond the order of remand and even in this issue of the matter, the order of remand made by the 2nd respondent cannot be found fault. The learned Counsel also pointed out to Rule 8 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (in short, referred to as 'the Rules' for the purpose of convenience, hereinafter) and would maintain that in the light of the same, it is clear that a consolidate order made by the Estate Officer would cause prejudice. Incidentally, the learned Counsel also had drawn the attention of this Court to Section 9 of the Act in this regard. The Counsel would conclude that in the light of the convincing reasons recorded by the appellate authority, there is no need to interfere in a Writ Petition filed under Article 226 of the Constitution of India.

5. Heard the Counsel and perused the orders produced before this Court.

6. The Senior Manager (Law), Airports Authority of India, Hyderabad Airport, had sworn to the affidavit filed in

support of the Writ Petition. It is averred in para 2 of the affidavit filed in support of the Writ Petition that *the first respondent was granted lease on 17-12-1999 for a period of three years upto 17-2-2002 at the rate of Rs.25/- per sq.mtr. for the purpose of running Officers' Club as per the terms and conditions of agreement. Further it is averred that the 1st respondent had occupied the adjacent land to the said premises contrary to the terms of the lease agreement and made number of constructions. It is also stated that since the first respondent raised the said constructions unauthorisedly, the same was brought to the notice of the third respondent – Estate Officer, appointed under the Act, requesting to take action for removal of unauthorized encroachments and constructions. It is further stated that the Estate Officer had issued notice dated 26/30-4-2001 under Section 4 of the Act clearly stating the grounds on which eviction was sought and the first respondent submitted explanation on 7-5-2001 to the Estate Officer and admitted the illegal constructions and assured that the same will be removed and thereafter, the Estate Officer after conducting due enquiry has passed final order on 2-7-2002 for eviction of the first respondent. It is also stated that challenging the same, the respondent preferred C.M.A.No.100 of 2002*

before this Court and this Court while disposing of the said appeal by its order dt.10-8-2004, held that the authority has virtually complied the mandatory requirements under Sections 4 and 5 of the Act, however, remanded the matter to the Estate Officer for passing a speaking order and against those proceedings, respondent filed W.P.No.24075/2004 and this Hon'ble Court disposed of the said Writ Petition by order dt.23-12-2004 granting leave and liberty to the petitioner to urge all the grounds available to him before the Estate Officer as per law. Further it is averred in para 3 of the affidavit filed in support of the Writ Petition that since the petitioner was not paying the rents payable under the agreement and has also unauthorisedly occupied the adjacent land and raised constructions without paying any charges and therefore, on the request of the petitioner, the Estate Officer had issued a notice under Section 7 of the Act to the first respondent on 4-4-2002 and he had submitted reply and the matter was pending after disposal of C.M.A.No.100/2002 and by complying with the directions of the appellate Court as per remand order, orders dt.22-2-2005 have been passed for eviction of the petitioner and also for payment of damages under Sections4, 5 and 7 of the Act by disposing the proceedings initiated for damages vide show cause notice dt.4-4-2002. Further it

is stated that challenging the order of the Estate Officer dt.22-2-2005, first respondent preferred C.M.A.No.24 of 2005 before the second respondent alleging that principles of natural justice have been violated and the order of the Estate Officer dt.22-2-2005 traverse beyond the scope of the remand order and the validity of notice dated 28-5-2002 was not considered. Further it is stated that the petitioners herein, who are the respondents in the said C.M.A., have filed counter stating that ample opportunity was given to the first respondent and the notice dt.28-5-2002 is only summons in pursuance of the earlier notice dt.26/30-4-2001 and disposing of the proceedings dt.26/30-4-2001 and 4-4-2002 by a common order cannot be termed as beyond the scope of remand order and that the scope of the remand order was to give reasons for eviction. Further it is stated that the Estate Officer had complied with the said order by giving due opportunity and had given valid reasons for eviction. It is also stated that as a matter of fact, three years licence period was already over by 17-2-2002 and the first respondent has no right to remain in possession of the property and that the first respondent without paying any amounts since last four years by raising one proceedings or the other is squatting on the property. It is also stated

that the second respondent after hearing the matter, again remanded the matter to the Estate Officer with a direction to pass two separate orders, as per the remand order made by the Principal District Judge in C.M.A.No.100 of 2002 and another under Section 7(1) and (2) by giving reasons as per the conditions prescribed under Rule 8. It is also further averred in para 5 of the affidavit filed in support of the Writ Petition that the finding of the learned Judge that the proceedings for eviction and damages have to be passed separately is perverse and there is no legal principle behind it. Further it is averred that the learned Judge having observed that though the respondent is not entitled to stick on the premises after expiry of the licence period, has passed the remand order without any reasons and that the learned Judge ought to have seen that no prejudice is caused to the respondent. It is also stated that the learned Judge having followed the decision report in ALD 2006 (1) page 31 and holding that the respondent has no right to stay in the premises, ought not to have passed the impugned order. Further it is stated that on expiry of the licence period, the first respondent has no right to remain in possession of the property and the disposal of proceedings under Sections4 and 5 of the Act by a common order cannot be termed as violation of rules and procedure prescribed under the Act

and as such the learned Judge ought not to have remanded the matter back to the Estate Officer for fresh consideration second time. It is also stated that in fact in the first round of litigation in C.M.A.No.100 of 2002 itself, the appellate authority observed that the Estate Officer has complied with all the mandatory requirements. It is further stated that the third respondent had given cogent reasons for eviction and also in view of expiry of licence period, the respondent has no right to continue in the premises and land. Further it is averred that the first respondent is not paying rents and as such, the order of the second respondent – appellate authority passed in C.M.A.No.24 of 2005dt.29-6-2006 is arbitrary, illegal and liable to be set aside. In such circumstances, the writ petitioner had approached this Court praying for the reliefs specified supra.

7. The Act is *an Act to provide for eviction of unauthorized occupants from public premises and for certain incidental matters.* Section 2 of the Act deals with ***definitions.*** Section 4 of the Act deals with ***issue of notice to show cause against order of eviction.*** Section 5 of the Act deals with ***eviction of unauthorised occupants*** and the said provision reads as hereunder:-

> *(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under*

Section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of sub-Section (2) of Section 4, the Estate Officer is satisfied that the public premises are in unauthorized occupation, the Estate Officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refused or fails to comply with the order of eviction on or before the date specified in the said order or within fifteen days of the date of its publication under sub-Section (1), whichever is later, the Estate Officer or any other officer duly authorized by the Estate Officer in this behalf may after the date so specified or after the expiry of the period aforesaid, whichever is later, evict that person from, and take possession of the public premises and may, for that purpose, use such force as may be necessary.

Section 7 of the Act deals with ***power to require payment of rent or damages in respect of public premises*** and the said provision reads as hereunder:-

(1) Where any person is in arrears of rent payable in respect of any public premises, the Estate Officer may, by order, require that person to pay the same within such time and in such instalments

as may be specified in the order.

(2) Where any person is, or has at any time been in unauthorized occupation of any public premises, the Estate Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such installments, as may be specified in the order.

(2-A) While making an order under sub-Section (1) or sub-Section (2), the Estate Officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with simple interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).

(3) No order under sub-Section (1) or sub-Section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, having been considered by the Estate Officer.

It is pertinent to note that Section 9 of the Act deals with ***appeals*** and sub-Section (1) of Section 9 says that *an appeal shall lie from every order of the Estate Officer made in respect of any public premises under Section 5 or*

Section 5-B or Section 5-C or Section 7 to an appellate officer who shall be the District Judge of the District in which the public premises are situate or such other judicial officer in that District of not less than ten years' standing as the District Judge may designate in this behalf. It may be appropriate to have a look at Rule 8 of the Rules also and the said Rule deals with ***assessment of damages*** and the said provision reads as hereunder:-

> *"In assessing damages of unauthorized use and occupation of any public premises the Estate Officer shall take into consideration the following matters, namely-*
>
> *(a) the purpose and the period for which the public premises were in unauthorized occupation;*
>
> *(b) the nature, size and standard of accommodation available in such premises;*
>
> *(c) the rent that would have been realized if the premises had been let on rent for the period of unauthorized occupation to a private person;*
>
> *(d) any damage done to the premises during the period of unauthorized occupation;*
>
> *(e) any other matter relevant for the purpose of assessing the damages.*

Rule 9 of the said Rules deals with ***procedure in appeals.***

8. Several of the facts are not in controversy between the parties. It is not in controversy that the first respondent as appellant preferred C.M.A.No.24 of 2005 on the file of II-Additional District Judge, Ranga Reddy District, Ranga Reddy District as against the order passed by the Estate Officer in case No.4/01 under sub-Section (1) of Section 5, sub-Section (2) (2-A) of Section 7 of the Act. Several grounds had been averred. Specific stand had been taken that the impugned order questioned in the appeal does not explain the validity of the notice issued under Section 4(1) of the Act. The order made in W.P.No.24076/2004 also had been referred to. Further specific stand had been taken that a new document which was never the subject matter in C.M.A.No.100/2002 cannot be introduced. Further specific stand had been taken that in the light of the order of remand made in C.M.A.No.100/2002 further order cannot be made under Section 7 of the Act which would be beyond the scope of the order of the remand. Several other facts had been narrated and in fact, the learned Judge relied upon ***2006 (1) ALD. 31*** and also had referred to the different provisions of the Act and the Rules framed thereunder and ultimately recorded *"In the result, the order under appeal is hereby set aside and the matter is remanded to*

the Estate Officer with a direction to pass two separate orders one s per the remand order made by Principal District Judge in C.M.A.No.100/02 and another u/s.7(1) and (2) by giving reasons as per the conditions prescribed under R.8 of the Premises of Eviction of Unauthorized Occupants Act, 1971. I direct both parties to bear their own costs." It may be appropriate to have a look at the relevant portions of the order made by the Principal District Judge, Ranga Reddy. It was observed as hereunder:-

> *"The mandatory procedure is followed or not has to be seen. Even according to the letter submitted by the appellant a show cause notice was issued to them and date for his personal hearing and on that date they (the appellant) have appeared before the Estate Officer and the matter was discussed. Therefore, once admitted these facts, it cannot be disputed by the appellant that no opportunity was given to them and they are not even aware of the date of hearing etc. Therefore, the Estate Officer issued show cause notice and also fixed the date of hearing and on that date, he heard the appellant. Virtually, he complied the mandatory requirement under Section 4 and 5."*

The impugned order in the said appeal also had been referred to and the same reads as hereunder:-

> *"Now, the only contention is whether the orders passed by him are speaking order, whether he*

has given reasons for it. The impugned order is very short and the reasons:

"Now, therefore, in exercise of the powers conferred on me under sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order the said M/s.Sumanasa Finance Pvt.Ltd., and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of date of publication of this order. In the event of refusal or failure to comply with this order within the period specified above the said M/s.Sumanasa Finance Pvt. Ltd., and all other persons, concerned are liable to be evicted from the said premises, if need be, by use of such force as may be necessary."

It was also further observed by allowing the appeal and remanding the matter again to the Estate Officer with a direction to dispose of the matter in accordance with law, which is as hereunder:-

"Therefore, except stating that they are in unauthorized occupation, he has of the given any reasons. Merely mentioning that he has satisfied that the appellant is in unauthorized possession is not sufficient. The Estate Officer ought to have given reasons why he come to the conclusion that the appellant is in unauthorized occupation of the property. It is mandatory on his part to give such a speaking order. Therefore, the order suffers from the said irregularity. Therefore, the same cannot be sustained. The

point is decided accordingly."

It may be appropriate to have a look at the relevant portions of the order made in E.O.Case No.04/2001 and the operative portion is as hereunder:-

> *"Now, therefore, in exercise of the powers conferred on me under sub-Section (1) of Section 5 and by sub-Section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order that M/s.Sumana Finance Private Limited, to vacate the said premises within 15 days of date of publication of this order. In the event of refusal or failure to comply with the said order within the period mentioned above, the said opposite party and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force, as may be necessary.*
>
> *Also I hereby order you to pay Rs.2,58,83,608 (Rupees two crores fifty eight lakhs eighty three thousand six hundred and eight only) assessed by me as damages on account of your unauthorized occupation of the premises. In exercise of the powers conferred by sub-Section (2-A) of Section 7 of the said Act, I also hereby require you to pay simple interest at the rate of 18% per annum amounted to Rs.46,59,049/- (Rupees forty six lakhs, fifty nine thousand and forty nine only) on the above sum with effect from 20-6-2000 till its final payment.*
>
> *In the event of your refusal or failures to pay the damages within the period or in the manner aforesaid amount will be recovered as an arrear*

of land revenue."

The schedule property also had been appended in the order made by the Estate Officer.

9. The said order was carried by way of appeal C.M.A.No.24/2005 on the file of II-Additional District Judge, Ranga Reddy District, NTR Nagar, Hyderabad, and the relevant operative portion already had been specified supra.

10. It may also be relevant to have a look at the order made in W.P.No.24076/2004 and the said order reads as hereunder:-

> *"The petitioner company stated to have been allotted Old barrack quarter No.R-26 on lease basis for running recreation club vide letter of allotment dated 17-2-1999, valid upto 31-3-2002 and thereafter extended mutually as agreed between the parties. The petitioner contends that it has spent huge sums of money for bringing the said premises to living standards and while so, the respondent issued a notice dated 18-3-2002 directing the petitioner to vacate the premises. For which the petitioner has submitted his reply on 22-3-2002 and subsequently filed a suit in O.S.No.220 of 2002 on the file of the Principal Junior Civil Judge (West & South), Ranga Reddy District. A show cause notice under Section 4(1) of the Public Premises (Eviction of unauthorized occupants) Act 1971 was issued to the petitioner, for which the petitioner has issued a reply notice on 17-6-*

2002. Thereafter, respondent passed an order dated 2-7-2002 directing eviction of the petitioner. Questioning the said order, the petitioner filed an appeal in C.M.A.No.100 of 2002 on the file of the Court of Principal District Judge, R.R. District and by order dated 10-8-2004 the appeal was allowed and the matter was remanded to the respondent for disposal in accordance with law. The petitioner contends that since the matter is remanded, he may be permitted to urge all the grounds including the validity of the notice dated 28-5-2002 before the respondent and the same may be considered in accordance with law.

Heard learned Counsel for petitioner and Mr.E.MadanMohan Rao for respondent. Both Counsel agreed for disposal of the Writ Petition at the admission stage.

The petitioner herein only wants to raise certain additional grounds before the primary authority/respondent. Having regard to the fact that the rights of the petitioner are involved, and the fact that sufficient opportunity must be given to the party, I am inclined to grant leave and liberty to the petitioner to urge all the grounds available to him in law, after the remand, before the respondent/primary authority. It is needless to mention that the respondent shall consider all the grounds raised by the petitioner on merits, in accordance with law, while passing a speaking order.

Subject to above observation, the Writ Petition is disposed of. No costs."

11. Now the question which falls for consideration before this Court is *whether the impugned order can be sustained in the light of the provisions of the Act and the Rules made thereunder or the same is liable to be quashed restoring the order of the Estate Officer in the facts and circumstances of the case?*

12. Sections 4, 5, 7 and relevant portions of Section 9 of the Act already had been referred to above. The relevant Rules – Rule 8 and Rule 9 also had been specified supra. Even as per the language employed in Section 9 *an appeal shall lie from every order of the Estate Officer made in respect of any public premises under Section 5 or Section 5-B or Section 5-C or Section 7 of the Act* as well. On a careful reading of Section 5 and Section 7 of the Act, the scope and ambit and the nature of enquiry also as ordained by these provisions appear to be different. Apart from this aspect of the matter, Rule 8 dealing with *assessment of damages* specifies what aspects to be taken into consideration by the Estate Officer. It is needless to say that Rule 9 of the Rules deals with *procedure in appeals*. In ***K.R.K.TALWAR v. UNION OF INDIA***[1] it was held that *the lessor or allottor has an absolute right to terminate the lease or cancel the allotment. It is not permissible in the course of judicial*

review to probe into the reasons for such action. Moreover, the non-payment of rent for a long time is a complete justification for such an action. In ***NEW DELHI MUNICIPAL COMMITTEE v. KALU RAM***[2] it was held that *Section 7 of 1958 Act does not create a right to realize arrears of rent without any limitation of time and "payable" means legally recoverable.* In ***RATAN CHAND v DELHI DEVELOPMENT AUTHORITY***[3] it was held that *under Section 7(2)of 1958 Act the Estate Officer has jurisdiction in cases where damages were being recovered at a particular rate and were sought to be recovered at a higher rate to increase or decrease the rate.*

13. Hence, in the light of the provisions of the Act and also the Rules specified above, the scope and ambit of Section 5 and Section 7 being different, it cannot be said that the order of remand made by the appellate authority is unjustified. More over, it is pertinent to note that in C.M.A.No.100/2002 an order of remand was made for a specified purpose but the Estate Officer had gone beyond thereto and while passing the orders, the Estate Officer could have exercised his powers under the Act and also the jurisdiction under Sections 5 and 7 of the Act respectively by duly applying his mind to the facts of the

case. A consolidated order made in this regard cannot be sustained and in the light of the same, an order of remand was made by the appellate authority. Hence, in the light of the limitations imposed on a Writ Court while exercising judicial review under Article 226 of the Constitution of India, this Court is of the considered opinion that the ingredients to be satisfied to exercise the Certiorari jurisdiction had not been established and hence the Writ Petition being devoid of merit, the same shall stand dismissed. No order as to costs. However, it is made clear that, inasmuch as, the litigation itself appears to be a long drawn litigation, let the Estate Officer make appropriate orders at the earliest point of time in accordance with the order of remand made by the appellate authority.

Justice P.S.Narayana

November, 2007

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[1] AIR 1977 Delhi 189
[2] (1976) 3 SCC. 407
[3] AIR 1974 Delhi 26